

*Original*

Manuel A. Wagan  
E-30055, 530-2-35 Low  
Post Office Box 9  
Avenal, CA 93204

In P ro Per

FILED  
APR 15 PM 1:07  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATE DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Manuel A. Wagan	)	No. C 08-1082 WHA (PR)
Petitioner,	)	NOTICE MOTION TO RECONSIDER
v.	)	AND REVERSE "JUDGMENT"
SAN MATEO COUNTY SUPERIOR COURT	)	ENTERED IN FAVOR OF RESPONDENT
Respondent,	)	BECAUSE THE COURT HAS NO
CALIFORNIA ATTORNEY GENERAL	)	JURISDICTION TO ENTERED
Real Party in Interest.	)	JUDGMENT IN FAVOR OF
	)	RESPONDENT PURSUANT TO RULE 81
	)	(B) Mandamus are abolished;
	)	BUT IF THE HONORABLE COURT
	)	WOULD LIKE TO TAKE JURISDICTION
	)	OF PETITIONER'S WRIT OF
	)	MANDAMUS PETITIONER RESPECTFULLY
	)	REQUEST THAT HE BE ALLOWED TO
	)	PROCEED IN FORMA PAUPERIS AND
	)	ORDER RESPONDENT TO RESPOND
	)	AND ADJUDICATE PETITIONER'S
	)	CLAIM ON THE MERIT. (ATTACHED
	)	PRISONER'S APPLICATION TO
	)	PROCEED IN FORMA PAUPERIS.)

Petitioner filed a "Motion to voluntarily withdraw or dismiss his Petition for Writ of Mandamus/Prohibition (document number 5) because under Rule 81 (B) mandamus are abolisshed in the district court<sup>1</sup>, so, the district court has no jurisdiction to entered "Judgment in favor of the respondent under Rule 81 (B). The "Judgment in favor of respondent must be reconsider and reverse because any ordered judgment of any court without jurisdiction is void because it violate Petitioner's "Due Process Right", liberty 1. Abolish, v. suppress, put an end to, cease, void, annul, invalidate, nullify, cancel, revoke, recind, repeal, eradicate, stamp-out, annihilate, exterpate, destroy, do away with, abrogate, obliterate, erase, extinguish, put out, eliminate. By The Random House Basic Dictionary of Synonyms & Antonyms.

1 interest, and equal protection under the 14th Amendment of the  
2 United States Constitution.

3 Both California and Federal Jurisprudence recognize that  
4 question of jurisdiction may be raised at anytime, and cannot be  
5 waived by Petitioner. Fraytag v. Commission of Internal Revenue,  
6 50 U.S. 868, 896, 11 S.Ct. 2631 (1991) discussing the "None  
7 waivebability" of lack of subject matter jurisdiction.

8 In the present case, the United States District Judge William  
9 Alsup has no jurisdiction to ordered "Judgement in favor of  
10 respondent (See Attached 2) on 04/03/08. Petitioner cannot waive  
11 his claim because Petitioner was convicted of "First Degree Attempt-  
12 ted Murder" a noncrime in California and was sentence to Life  
13 with a possibility of parole without a conviction of willful,  
14 deliberate, and premeditated attempted murder. (See Petition for  
15 Writ of Mandate/Prohibition pages 1 to 18.) The Due Process  
16 Clause of the Fourteenth mendment of the United States Constitu-  
17 tion in In re Winship, 397 U.S. 358, 90 S.Ct. 1068 (1970), held  
18 that due process requires that all elements of a crime be proved  
19 beyond a reasonable doubt. Thus, the Respondent violated Peti-  
20 tioner's due process right when it imposed a life sentence to the  
21 Petitioner without a conviction of willfu, deliberate, and  
22 premeditated attempted murder. "The Due Process Clause of the  
23 14th Amendment was intended to prevent government 'from abusing  
24 (its) power, employing it as an instrument of oppression,'"   
25 Davidson v. Cannon, 106 S.Ct. at 670; see also DeShaney v.  
26 Winnebago Dept. of Soc. Sev., 489 U.S. 189, 196, 109 S.Ct. 998,  
27 1003 "To secure the individual from the arbitrary exercise of  
28

power of government." and "to prevent governmental power from being used for purposes of epression". "The touchtone of due process is the protection of the individual against arbitrary government action. *Dent v. West Verginia*, 129 U.S. 114, 123 (1899); *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974); *Daniels v. Williams*, 474 U.S. 327, 331 (1986).

But if the Honorable Court decided to take jurisdiction of P etitioner's Writ of Mandamus/Prohibition on whatever Federal Statutory Authority the Court chose to do so, Petitioner respectfully request that he be allowed to "Proceed in Forma Pauperis and order Respondent to respond to the merit of Petitioner's claims and "reconsider and reverse" "Judgment entered in favor of respondent and vacate order "Dismissiong Case". (See Attached 1 Order Dismissing Case and Attached 2 Judgment.) (See also Motion Prisoner's Application to Proceed in Forma Pauperis and Trust Account Statement and Petitioner is requesting waiver of Certified Certificate of Funds in Prisoner's Acount because of Avenal State Prison's Policy that they want to have copy of Petitioner's Legal Mail that going to the Court which violate Petitioner's right to Confidential Legal Mail.)

Therefore for the above stated reason petitioner respectfully request that the Honorable Court grant this motion in the intirest of justice so required. And appoint counsel to protect Petitioner 's right to Due Process Clause under the 14th Amendment of the U.S. Constitution. Pro Per filling must be liberally construed *Haines v. Kerner*, \_\_\_ S.Ct. \_\_\_.

1           Petitioner declare under the penalty of perjury that the  
2           foregoing is true and correct.

3           Date: April 9, 2008.

4                               Respectfully submitted,

5  
6                               *Manuel A. Wagan*      *Suif*  
7                               Manuel A. Wagan, In Pro Per  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

Manuel A. Wagan

Case No. CV08-01082 WHA

Plaintiff,

CERTIFICATE OF SERVICE

v.

SAN MATEO COUNTY SUPERIOR COURT

Defendant.

I, the undersigned, hereby certify that I am the Petitioner of this case stated above and presently incarcerated in Avenal State Prison in California.

That on April 9, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail in the Avenal State Prison Mail Room or by placing said copy(ies) into the hand of Correctional Officer who handle Legal Mail in Avenal State Prison Facility Five Building 530.

1. DORIAN JUNG  
Deputy Attorney General  
(State Bar No. 20016)  
455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-7004

I declare under penalty of perjury that the foregoing is true and correct, have for portion alleged on information and belief, which portions I believe are true.

EXECUTED: Avenal, CA 93204, this 9 day of April 2008.

Signed: Manuel A. Wagan Seal

Manuel A. Wagan In Pro  
Per



**ORIGINAL  
FILED**

APR 3 2008

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

MANUEL A. WAGAN,

No. C 08-1082 WHA (PR)

Petitioner,

**ORDER DISMISSING CASE**

v.

SAN MATEO COUNTY SUPERIOR  
COURT,Respondent.  
\_\_\_\_\_ /

Petitioner's request to voluntarily dismiss his petition for a writ of mandamus (document number 5) is **GRANTED**. This case is **DISMISSED**. The clerk shall close the file.

**IT IS SO ORDERED.**Dated: April 3, 2008.
  
 WILLIAM ALSUP  
 UNITED STATES DISTRICT JUDGE

G:\PRO-SE\WHA\HC.08\WAGAN1082.DSM.wpd

Attached 1 Seal missing.

**FILED**

**APR 3 2008**

**RICHARD W. WIEKING**  
CLERK, U.S. DISTRICT COURT,  
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MANUEL A. WAGAN,  
Petitioner,

No. C 08-1082 WHA (PR)

**JUDGMENT**

v.

SAN MATEO COUNTY SUPERIOR  
COURT,

Respondent.

ENTERED IN CIVIL DOCKET 04/03/08

Petitioner having dismissed this case, judgment is entered in favor of respondent.

Petitioner shall obtain no relief by way of his petition.

**IT IS SO ORDERED.**

Dated: April 3, 2008.

*Wby*  
\_\_\_\_\_  
WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE

G:\PRO-SE\WHA\HC.08\WAGAN1082.JUD.wpd

Attached 2 Seal will Magan on